

have further ensured to provide security to the witnesses during the recording of their evidence.

6. Per contra, learned counsel for the opposite party nos.2 to 4 has opposed the aforesaid prayer but agreed to cooperate in the trial proceedings.

7. Upon hearing learned counsel for the parties and after taking into consideration the entire facts and circumstances, it transpires that the trial is at the stage of evidence and the applicant/informant was provided adequate security at the time of the recording of the evidence as PW-1 and further considering the fact that the applicant has not brought on record any real apprehension of threat from the respondents accused but looking to the convenience of the parties and in the interest of justice, it is hereby provided that in case, the applicant/first informant or any of the witnesses approaches the authorities concerned by moving an application seeking protection under the **Witness Protection Scheme, 2018** in the light of directions given by the Hon'ble Supreme Court in the case of **Mahendra Chawla and others vs. Union of India and others, (2019) 14 SCC 615** for a free and fair trial, the authorities concerned shall ensure that the adequate security be provided to the applicant and the witnesses till the conclusion of the trial.

8. With the aforesaid directions, the present application stands **disposed of**.

(2025) 2 ILRA 421

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 14.02.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.

THE HON'BLE SUBHASH VIDYARTHI, J.

Special Appeal No. 70 of 2025

Prashant Kumar Mishra & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioners:

Mohd. Mansoor, Mohammad Danish

Counsel for the Respondents:

C.S.C., Ripu Daman Shahi

A. Service Law – UP Police Radio Subordinate Service Rules, 2015 – Part IV – Reg. 8 (c) – Post of Operators/ Head Operator (Mechanical) – Qualification – Advertisement require three years Diploma – Petitioners, having Bachelor Degree, claim themselves eligible as it is a higher qualification – Permissibility – Held, any recruitment to public posts has to be carried out strictly in accordance with the provisions contained in the Recruitment Rules – A Bachelor Degree are not eligible for seeking appointment in furtherance of the recruitment notification dated 06.01.2022. (Para 6, 19 and 35)

B. Service Law – Candidature – Cancellation – False information given during submission of the Application Form – Effect – Held, the petitioners applied for selection to the posts in question on their own by submitting false information regarding their eligibility qualification which renders their candidature liable to be canceled. (Para 25)

C. Service Law – Qualification – Issue regarding equivalence – Competence to decide it – Equivalence of qualification for the purpose of appointment to public posts can be decided by the employer alone. The employer in the present case is the St. Government – The Recruitment Board has no authority to take any decision regarding equivalence of qualifications. (Para 21 and 39)

D. National Education Policy, 2020 – Nature – How far it override the Rules – Held, the policy is a vision document for making improvements in the education system in future – A mere policy cannot override the specific provisions of recruitment Rules and unless the recruitment Rules are amended. (Para 32 and 33)

Special Appeal partly allowed. (E-1)

List of Cases cited:

1. Deepak Singh & ors.Vs St. of U.P. & ors.; 2020 (1) ALJ 596: 2019 SCC OnLine All

2. Maharashtra Public Service Commission Vs Sandeep Shriram Warade; (2019) 6 SCC 362

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri J. N. Mathur, Senior Advocate assisted by Sri Mohd. Mansoor and Sri Mohd. Danish Advocates, the learned counsel for the appellants, Sri Shailendra Kumar Singh, learned Chief Standing Counsel assisted by Sri Prafulla Kumar Yadav, learned Additional Chief Standing Counsel appearing on behalf of the State/opposite parties no.1 to 4, Sri Ratnesh Chandra, the learned counsel for the opposite parties no.5 to 19 and perused the records.

2. By means of the instant intra Court appeal filed under Chapter VIII, Rule 5 of the Allahabad High Court Rules, 1952 the appellants have challenged the validity of a judgment and order dated 08.01.2025, passed by an Hon'ble Single Judge Bench of this Court in Writ-A No.4610 of 2024: Ravi Kumar Shukla and others Vs. State of U.P. and others, which was decided along with Writ-A No.7284 of 2024: Prabhat Kumar Pandey Vs. State of U.P. and others.

3. The aforesaid Writ Petition had been filed by 15 petitioners, who have been

arrayed as opposite parties no.5 to 19 in this Special Appeal, against the appellants, who were opposite parties no.1 to 4 in the writ petition challenging the validity of a resolution passed in a meeting of the U. P. Police Recruitment and Promotion Board (hereinafter referred to as the 'Recruitment Board') on 23.04.2024, whereby the Recruitment Board modified its previous resolution dated 25.08.2021. The earlier resolution dated 25.08.2021 had provided that persons holding 4 years' Bachelor Degree should also be eligible for the post of Operator/Head Operator (Mechanical) and this decision was revoked by the resolution dated 23.04.2024.

4. Briefly stated, facts of the case are that the Recruitment Board had issued an advertisement dated 06.01.2022 for making direct recruitment on 936 posts of Operators/Head Operators (Mechanical). The educational qualification mentioned in the advertisement was possessing a 3 years' Diploma in Electronics / Telecommunication / Electrical / Computer Science / Information Technology / Instrumentation Technology / Mechanical Engineering awarded by any Board in India established by law or having passed any other examination treated by the Government as equivalent thereto.

5. It appears that numerous candidates possessing Bachelor Degree in Mechanical Engineering also applied in response to the aforesaid advertisement mentioning their qualification as diploma and they participated in the written examination. Thereafter, the Recruitment Board passed the impugned resolution dated 23.04.2024 stating that it was revoking its earlier resolution that candidates possessing 4 years' Bachelor Degree will also be eligible for the post in question.

6. The petitioners contended that prior to issuance of the advertisement dated 06.01.2022, the Recruitment Board had taken a decision in its meeting held on 25.08.2021, whereby it was resolved that the candidates having 4 years Bachelor Degree in streams like Electronics / Telecommunication / Electrical / Computer Science / Information Technology / Instrumentation Technology / Mechanical Engineering will be eligible for selection, as they possess a higher qualification.

7. It was pleaded in the Writ Petition that a copy of the resolution dated 25.08.2021 passed by the Recruitment Board was not available with the petitioners even till filing of the Writ Petition. A candidate Vidya Sagar was stated to have submitted an application dated 01.03.2024 under the Right to Information Act and it was informed in its reply dated 03.04.2024 that in its resolution dated 25.08.2021 the Recruitment Board had decided that the candidates possessing 4 years' Bachelor Degree will also be eligible.

8. The State filed a counter affidavit opposing the Writ Petition stating that the recruitment is being conducted under the provisions of U.P. Police Radio Subordinate Services Rules, 2015; that in the recruitment notification dated 06.01.2022 the qualification advertised was as per the provisions contained in the Rule 8-C of the Rules of 2015; that as per the Rules the right to determine equivalence of qualifications lies with the State Government and the State Government has not taken any decision to treat a Bachelor Degree equivalent to a Diploma for the purpose of the aforesaid Rules; that the Recruitment Board does not have the

authority to determine the equivalence of qualifications.

9. The State further pleaded that the advertisement specifically stated that it will be the responsibility of the candidate to present the documentary evidence to prove the accuracy, correctness and equivalence of the educational qualification displayed in the application form. All the petitioners submitted their applications through online mode and all of them mentioned their educational qualification as Diploma, although they did not possess Diplomas and they possessed Bachelor Degrees. It was clearly mentioned that in the admit cards issued to the candidates that they were being permitted to appear in the written examination on a provisional basis and the educational certificates of the candidates were to be examined at the time of scrutiny of records and physical standard test. The counter affidavit further states that there is no mention of the resolution dated 25.08.2021, passed by the Recruitment Board in the recruitment notification.

10. Twelve persons, including the 4 appellants and the opposite parties no. 20 to 27 who have been impleaded in proforma capacity, filed an application for impleadment in the Writ Petition, which application was allowed. They pleaded that they possess the qualification prescribed by the Service Rules of 2015 and published in the recruitment notification dated 06.01.2022. They further pleaded that the 4 year Bachelor course and 3 years Diploma course in any branch of engineering are altogether different. They relied upon a Full Bench decision of this Court in the case of **Deepak Singh and others Vs. State of U.P. and others**: 2020 (1) ALJ 596: 2019 SCC OnLine All 4471.

11. The Hon'ble Single Judge decided the Writ Petition by the impugned judgment and order dated 08.01.2025, wherein it held that: -

“16...The Rules as it stands out today clearly indicate that it is only the Diploma holders who are eligible to be appointed to the post of Head Operator / Head Operator (Mechanic). The Board, in exercise of its power to process the selection is an executive body tasked only to carry out the machinery provisions of recruitment. They are not the appointing authority or the controlling authority of the persons who they seek to recruit. They must comply with various service Rules which provide for eligibility conditions of the candidates who are to be recruited. They are bound by the conditions of service Rule, and they are totally incompetent to issue any clarification with regard to the eligibility of the candidates who are to participated in the recruitment process. Such an order passed by the relevant recruitment board was at the very start arbitrary, illegal and without jurisdiction. Subsequently, they proceeded to ratify the order by means of order dated 31.01.2024 and subsequently, in a few days they took a u-turn and by means of the impugned order dated 23.04.2024 stated that they substantially modified the previous order dated 25.08.2021 and further to declare that the candidates having qualification of 4 years degree course of engineering would not be eligible to participate in the said recruitment examination. When the Police Recruitment Board was aware of the fact that they could not determine or modify or change the eligibility conditions then they should have refrained from making any statement/declaration with regard to the eligibility of persons possessing a degree in the impugned order dated 23.04.2024. It

was only the State government who could have passed any order pertaining to the equivalence.

17. From the aforesaid facts, it is clear that merely because of the unauthorized and unlawful interference of the Police Recruitment Board by issuing the order dated 25.08.2021 and subsequently, issuing orders on 01.04.2024 and 23.04.2024 the entire selection process has been called in question and majority of the candidates are not aware as to whether they are eligible to participate or they are ineligible to participate in the said recruitment examination. We have been informed by the learned standing counsel that 75% of the candidates who have participated in the selection process are engineering degree holders.

** * **

25. The decision of the selection board dated 25.08.2021 declaring engineering degree holders eligible was questionable, as any determination of equivalence between an engineering degree and a diploma should have been made solely by the State Government in accordance with Rule 8 of the said Rules. Recognizing its mistake, the selection board attempted to rectify the error through the impugned order, declaring engineering degree holders ineligible to participate in the selection process.

26. Such an exercise, carried out during the selection process, strikes at the very root of its fairness and transparency. Determining or clarifying the eligibility of candidates after the commencement of the selection process is inherently flawed, as such matters should have been resolved before the publication of the advertisement. This failure to finalize eligibility conditions in a timely manner vitiates the entire selection process.

** * **

32. Accordingly, we find that the entire selections which has been conducted stands vitiated on account of the unwarranted interference and passing of orders by the Police Recruitment Board and also considering that a substantial percentage (about 75%) of the candidates are adversely affected by the illegal and arbitrary interference of the selection board. Accordingly, the entire selection as such is set aside. The respondents are directed to finalize the eligibility conditions and amend the service rules, in case they so desire. Once they have taken a decision in this regard, they should publish a fresh advertisement clearly indicating the eligibility conditions for the qualification for the post of Head Operator / Head Operator (Mechanic) and after publishing of the said advertisement they should conduct the recruitment process and conclude the same at the earliest in accordance with law. Since two and half years have lapsed since the advertisement was issued and many of the candidates may have become overage, and considering it is only on account of the acts of omission/commission of the respondents that the present recruitment is being set aside, it would be in the interest of justice, to permit such candidates who possess requisite educational qualifications and have participated in the present recruitment process to participate in the next recruitment process, ignoring only their requirement of age.”

12. Challenging the validity of the aforesaid order the learned Counsel for the appellants has submitted that the finding of the learned Writ Court that it is only the Diploma holders who are eligible to be appointed to the posts in question, is correct and the Writ Petition ought to have been dismissed on this finding alone. The

Writ Court has erred in allowing the Writ Petition and setting aside the entire selection holding that although the petitioners are not eligible to participate in the selection process since a Bachelor Degree in Engineering was not the prescribed qualification, guided by the decision of the selection board dated 25.08.2021 they applied for and were permitted to participate in the written examination contrary to the eligibility prescribed.

13. Sri Prafulla Kumar Yadav, the learned Additional Chief Standing Counsel appearing on behalf of the State, has submitted that the Recruitment Board was required to carry out the recruitment as per the Service Rules of 2015. As per the Rules, the authority to take any decision regarding equivalence of qualifications vested in the State Government and the Recruitment Board had no such authority. Any decision taken by the Recruitment Board without any authority of law would be null and void and it would not affect the rights of any person regarding the selection process.

14. The learned Additional Chief Standing Counsel has produced a copy of the counter affidavit filed by the State and he has invited attention of the Court to the applications submitted by the petitioners, in which they had mentioned their qualification as Diploma in Engineering and they did not mention that they possess Bachelor Degrees.

15. This appeal was taken up as a fresh case on 12.02.2025 on which date it was passed over on the request made by Sri Ratnesh Chandra, the learned counsel for respondent nos. 5 to 19, who were the petitioners in the Writ Petition and who are

persons holding Bachelor Degree in engineering, that he was in the process of filing a Special Appeal on behalf of the petitioners in the Writ Petition and both the appeals may be heard together on 14.02.2025. Today also a request was made by him that he had filed the Special Appeal and the same should be called for from the Registry and heard along with the instant appeal but later on he informed the Court that his appeal was not ready to be filed today.

16. Sri Ratnesh Chandra, learned counsel has vehemently opposed the Special Appeal on behalf of respondent nos.5 to 19 and he has submitted that the petitioners possess a higher qualification of 4 years' Bachelor Degree, which includes the syllabus taught in the 3 years' Diploma courses and, therefore, the petitioners are fully eligible for being appointed to a post for which the eligibility qualification is a 3 years' Diploma. He has submitted that the persons holding Bachelor Degree in Engineering would be eligible to be appointed on posts for which the eligibility qualification is Diploma in engineering as per the National Education Policy, 2020 issued by the Government of India.

17. The learned Counsel for the opposite parties no. 5 to 19 further submitted that once the Recruitment Board took the decision dated 25.08.2021 that candidates having Bachelor Degree will be eligible for appointment to the posts in question, the same cannot be rescinded by the subsequent decision dated 23.04.2024 after the petitioners had already participated in the written examination.

18. We have considered the submissions advanced by the learned counsel for parties and have gone through the material available on record.

19. It is settled law that any recruitment to public posts has to be carried out strictly in accordance with the provisions contained in the Recruitment Rules. Recruitment to the post of Head Operator/Head Operator (Mechanical) is governed by the Uttar Pradesh Police Radio Subordinate Service Rules, 2015 (which will hereinafter be referred to as 'the Service Rules of 2015'). Part-IV of the aforesaid regulations deals with eligibilities. Regulation 8 (c) falling in Part-IV of the aforesaid regulation provides the following eligibility qualification for the post of Operators/Head Operators (Mechanical): -

"The candidate should have passed a 3 years' Diploma course in Electronics / Telecommunication / Electrical / Computer Science / Information Technology / Instrumentation Technology / Mechanical Engineering awarded by any Board in India established by law or having passed any other examination treated by the Government as equivalent thereto."

20. Rule 3 (g) of the Rules of 2005 defines that "Government" means the Government of Uttar Pradesh.

21. It is settled law that equivalence of qualification for the purpose of appointment to public posts can be decided by the employer alone. The employer in the present case is the State Government. The Hon'ble Single Judge has rightly held that the Recruitment Board has to carry out the recruitment as per the provisions contained in the relevant service Rules and the conditions published in the recruitment notification. It has no authority to take any decision regarding equivalence of qualifications.

22. It was in accordance with the aforesaid Rule that the eligibility qualification was published in the recruitment notification dated 06.01.2022. Apparently, a Bachelor Degree in engineering is not included in the eligibility condition either in the Rules of 2015 or in the recruitment advertisement. The petitioners and numerous other persons possessing Bachelor Degrees in Engineering applied for being appointed to the posts in question and all of them mentioned their qualification to be a Diploma in Engineering. Apparently, the candidates possessing Bachelor Degree in engineering had submitted false information in their applications regarding the eligibility qualification.

23. Clause 10 (4) of the recruitment notification dated 06.01.2022 provides that if it is found at any stage that the candidate does not possess the requisite qualifications or he has furnished incorrect / false information / certificate / documents or he has concealed any facts, his candidature shall be deemed to be canceled. If any such fact comes to light even after the candidate has joined his duties, his services can be terminated and his selection can be canceled and he will be prosecuted.

24. Moreover, the resolution dated 25.08.2021 passed by the Recruitment Board was never published and it was never communicated to the petitioners or any other candidate. This resolution was not available with the petitioners even at the time of filing of the Writ Petition as has specifically been pleaded in para 8 of the Writ petition. Therefore, the petitioners or any other candidate cannot claim that although the Service Rules and the recruitment notification mention the eligibility qualification to be a 3 years'

Diploma in Engineering, the resolution dated 25.08.2021 led them to believe that they persons holding Bachelor degree in Engineering would also be eligible as this qualification is equivalent to a Diploma in Engineering.

25. The petitioners applied for selection to the posts in question on their own by submitting false information regarding their eligibility qualification which renders their candidature liable to be canceled.

26. In **Deepak Singh (Supra)**, the following questions were decided by a Full Bench of this Court: -

“A. Whether a Degree in the field in question is entitled to be viewed as a higher qualification when compared to a Diploma in that field?”

B. Whether the decisions in Alok Kumar Mishra and Kartikey lay down the correct position in law when they hold that a Degree holder is excluded from the zone of consideration for appointment as a Junior Engineer?”

C. Whether a degree holder can be held to be ineligible to participate in a selection process for Junior Engineer in light of the relevant statutory Rules?”

D. Whether the exclusion of degree holders from the zone of consideration would meet the tests as propounded by the Supreme Court in State of Uttarakhand v. Deep Chandra Tewari?”

27. The Full Bench given the following answers to the questions: -

“1) A Diploma in Engineering and Degree in Engineering are two distinct qualifications and a degree in the field in question cannot be viewed as a higher

qualification when compared to Diploma in that field.

2) The decision in the case of Alok Kumar Mishra (supra) and Kartikey (supra) laid down the correct position in law holding that the degree holder is excluded from the zone of consideration for appointment as a Junior Engineer with regard to the Diploma in question.

3) The degree holder is held to be ineligible to participate in the selection process of Junior Engineer in the light of the Advertisement issued.

4) The exclusion of the degree holders from the zone of consideration is in consonance with the tests propounded by the Supreme Court in case of State of Uttarakhand v. Deep Chandra Tewari.

5) The State Government, while prescribing the essential qualifications or desirable qualifications are best suited to decide the requirements for selecting a candidate for nature of work required by the State Government and the courts are precluded from laying down the conditions of eligibility. If the language in the Rules is clear judicial review cannot be used to decide what is best suited for the employer.”

28. The aforesaid law laid down by the Full Bench is binding on this Court.

29. So far as the submission made by the learned Counsel for the opposite parties no. 5 to 19 that as per the National Education Policy, 2020, a person possessing Bachelor Degree in engineering is entitled to be appointed to the post for which Diploma in Engineering is the essential qualification, suffice it to say this is a new plea raised for the first time in this appeal and this plea was not taken before the Writ Court.

30. It is stated in the National Education Policy that the “Policy **proposes** the revision and revamping of all aspects of the education structure, including its regulation and governance, to create a new system that is aligned with the aspirational goals of 21st century, while building upon India’s traditions and value systems.

31. Chapter 11 of the Policy is titled ‘Towards a More Holistic and Multidisciplinary Education’ and clause 11.09 of the policy reliance whereon has been placed by Sri Ratnesh Chandra provides as follows:

*“11.9. The structure and lengths of degree programmes **shall** be adjusted accordingly. The undergraduate degree **will** be of either 3 or 4-year duration, with multiple exit options within this period, with appropriate certifications, e.g., a certificate after completing 1 year in a discipline or field including vocational and professional areas, or a diploma after 2 years of study, or a Bachelor ’ s degree after a 3-year programme. The 4-year multidisciplinary Bachelor programme, however, **shall** be the preferred option since it allows the opportunity to experience the full range of holistic and multidisciplinary education in addition to a focus on the chosen major and minors as per the choices of the student. An Academic Bank of Credit (ABC) **shall** be established which would digitally store the academic credits earned from various recognized HEIs so that the degrees from an HEI can be awarded taking into account credits earned. The 4-year programme may also lead to a degree ‘with Research’ if the student completes a rigorous research project in their major area(s) of study as specified by the HEI.”*

32. Apparently, the policy is a vision document for making improvements in the education system in future. Further, there is nothing on record to indicate that the proposals of the National Education Policy, 2020 regarding Diploma and Degree contained in Clause 11.9 have actually been implemented and that the petitioners had studied the modified syllabus as per the National Education Policy, 2020 under which they have studied the syllabus which is taught to the students of 3 years' Diploma in engineering. In response to a specific question put by the Court Sri Ratnesh Chandra stated that all the petitioners have obtained their Bachelor degree prior to the commencement of National Education Policy, 2020.

33. A mere policy cannot override the specific provisions of recruitment Rules and unless the recruitment Rules are amended thereby including a 3 years' Diploma as an eligibility qualification or unless the State Government takes a decision treating 4 years' Bachelor Degree in Engineering as equivalent to a 3 years' Diploma, the recruitment must be carried out in accordance with the provisions contained in the recruitment Rules and the conditions mentioned in the recruitment notification. The persons who do not hold the prescribed qualification cannot seek appointment against the post in question.

34. The questions relating to syllabus of a Diploma in Engineering and a Bachelor Degree in Engineering can only be decided by persons having expertise in the concerned fields and it falls outside the scope of judicial review by this Court. In **Maharashtra Public Service Commission v. Sandeep Shriram Warade**: (2019) 6 SCC 362, the Hon'ble Supreme Court

reiterated this principle in the following words: -

*“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. **If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law.** In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”*

(Emphasis added)

35. Therefore, we are in agreement with the view taken by the Writ Court that the persons holding a Bachelor Degree are not eligible for seeking appointment in furtherance of the recruitment notification dated 06.01.2022. However, we find ourselves unable to agree with the view taken by the Writ Court in setting aside the entire selection and directing the respondents to finalize the eligibility

conditions and amend the service rules, in case they so desire, and to publish a fresh advertisement clearly indicating the eligibility conditions for the qualification for the post of Head Operator / Head Operator (Mechanic). Such a direction could only be issued if there was any ambiguity in the advertisement or it was contrary to any rules or law, which is not the case here.

36. In the present case the language of the advertisement and the rules are clear, that the eligibility qualification for the posts in question is that *“The candidate should have passed a 3 years’ Diploma course in Electronics / Telecommunication / Electrical / Computer Science / Information Technology / Instrumentation Technology / Mechanical Engineering awarded by any Board in India established by law or having passed any other examination treated by the Government as equivalent thereto”* and Rule 3 (g) of the Rules of 2005 defines that “Government’ means the Government of Uttar Pradesh. The Court cannot sit in judgment over the same. In absence of any ambiguity in the advertisement and in absence of contravention of any rule, there was no justification for setting aside the selection process and to send the matter back to the appointing authority to finalize the eligibility conditions and amend the service rules, in case they so desire.

37. The recruitment process initiated as per the recruitment Rules has to allowed to be completed and it cannot be set aside for the mere reason that a large number of ineligible persons have participated in the selection process and they have appeared in the written examination. As has already been noted above, the ineligible persons holding Bachelor Degree have participated

in the selection process by submitting false information regarding their educational qualifications, which makes their candidature liable to be canceled. The mere fact that they were allowed to provisionally appear in the written examination as per the information submitted by themselves in their online application forms and the fact that they do not possess the eligibility qualification would be revealed only upon scrutiny of their documents would not create an estoppel restraining the authorities from cancelling their candidature.

38. In case the persons holding Bachelor Degrees in Engineering were aggrieved by the non-mention of this qualification in the advertisement, the proper course open for them was to challenge the same promptly i.e. as soon as the advertisement was published. They could not have participated in the selection process when they did not possess the prescribed qualification, and in any case, they could not have participated by furnishing false information regarding their qualification in their application submitted through online mode.

39. The Recruitment Board had no authority to decide the eligibility qualifications as per Rule 8 (c) of the Service Rules and the resolution dated 25.08.2021 passed by the Recruitment Board which was under challenge in the Writ Petition is concerned, has no legal consequence. The resolution dated 25.08.2021 was neither published nor was it communicated to the candidates in any manner and it did not confer any right or even semblance thereof on any person. Therefore, the revocation of the unpublished resolution dated 25.08.2021 by the subsequent resolution dated 23.04.2024,

does not cause any prejudice to any candidate and it does not vitiate the selection process.

40. Therefore, we find ourselves unable to agree with the view taken by the Hon'ble Single Judge that the aforesaid resolutions vitiate the selection process.

41. In view of the foregoing discussions, the intra Court appeal is hereby allowed. The impugned judgment and order dated 08.01.2025 is upheld to the extent that it holds that the persons possessing Bachelor Degree in engineering are not eligible for being appointed to the posts in question. However, that part of the judgment of the Writ Court by which the entire selection process has been set aside and the authorities have been directed to finalize the eligibility conditions and amend the service rules, in case they so desire, is not sustainable in law in view of the discussion made above and the same is hereby set aside. Costs made easy.

(2025) 2 ILRA 431
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.02.2025

BEFORE

THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ-A No. 713 of 2025

Smt. Durgesh Sharma & Ors. ...Petitioners
Versus
State of U.P.& Ors. ...Respondents

Counsel for the Petitioners:

Sri Abhishek Bhushan, Sri Himanshu Singh,
 Sri Anil Bhushan (Sr. Advocate)

Counsel for the Respondents:

C.S.C.

Service Law-salary-On basis of a complaint made by a complainant – an enquiry was initiated despite earlier complaint by the same person was rejected-impugned order- salary stopped -stating that petitioner's appointment was subject to the Writ which was dismissed as withdrawn and interim order was vacated - therefore, order of approval itself becomes inoperative and their salary got stopped –writ-appointment of petitioners were approved by the DIOS during pendency of the writ petition- on basis of consideration by Finance Section – said approval order not challenged-acted upon by granting promotion-impugned order set aside.

W.P. disposed. (E-9)

List of Cases cited:

Ashok Kumar Dwivedi Vs St. of U.P. & ors.,
 2025:AHC:6788

(Delivered by Hon'ble Saurabh Shyam
 Shamshery, J.)

1. The petitioners have set up a case that respondent, a minority institution, has issued an advertisement to fill up three substantive vacancies for the post of Assistant Teachers LT grade. The petitioners have applied for the said post and were duly appointed and in pursuance of their respective appointment letters, they joined service on 1st August 1998. Further case is that Committee of Management of concerned institution have submitted the documents to concerned DIOS for approval on 7th August 1998.

2. It is further case of the petitioners that when concerned DIOS has not passed any specific order in terms of the relevant provisions, their approval was deemed to be approved and when their salaries were not paid, they constrained to